

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CHARLES E. RICHARDSON,

Plaintiff,

vs.

**Case No.: 2:15-cv-3049
JUDGE GEORGE C. SMITH
Magistrate Judge Jolson**

**CAROLYN W. COLVIN, ACTING
COMMISSIONER OF SOCIAL SECURITY,**

Defendant.

ORDER

On November 17, 2016, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Plaintiff's statement of errors be overruled and that judgment be entered in favor of the Defendant, the Commissioner of Social Security. (*See Report and Recommendation*, Doc. 17). This matter is now before the Court on Plaintiff's Objections to the Magistrate Judge's *Report and Recommendation*. (Doc. 18). Defendant has replied. The Court will consider the matter *de novo*. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Plaintiff's objections primarily restate the arguments he previously asserted in the Statement of Errors, including that the Administrative Law Judge erred in failing to find that his symptoms and conditions satisfied Listing 1.04A for disorders of the spine. Both the Commissioner and the Magistrate Judge agree that the ALJ improperly considered the relationship between Listing 1.04A and Listing 11.00, however, this consideration was harmless.

Plaintiff still had the burden to show that the Listing was met and the Magistrate Judge agreed with the ALJ's finding that the evidence presented by Plaintiff only established that it was intermittent. Plaintiff counters that the intermittent findings do not automatically bar application of Listing 1.04A to his claim. The Court has carefully considered Plaintiff's arguments, and the evidence referenced by both the ALJ and the Magistrate Judge, and agrees that Plaintiff has not satisfied the durational requirement.

The Court has carefully considered all of Plaintiff's arguments raised in her Statement of Errors and the Objections to the Magistrate Judge's *Report and Recommendation*. The Court agrees with the Magistrate Judge's analysis of the issues raised. For the reasons stated in the well-reasoned *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit.

Based on the aforementioned and the detailed *Report and Recommendation*, the Court finds that Plaintiff's objections have been thoroughly considered. Accordingly, the *Report and Recommendation*, Document 17, is **ADOPTED** and **AFFIRMED**. Plaintiff's Objections are hereby **OVERRULED**. Plaintiff's Statement of Errors is hereby **OVERRULED**, and the decision of the Commissioner of Social Security is **AFFIRMED**.

The Clerk shall remove Documents 17 and 18 from the Court's pending motions list, and enter final judgment in favor of Defendant, the Commissioner of Social Security.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT